

Message Text

PAGE 01 STATE 254860

10
ORIGIN SS-15

INFO OCT-01 ISO-00 SSO-00 /016 R

66618
DRAFTED BY IO/CMD:ELBRUCE:JPS:LMS
APPROVED BY L/EB:PRTRIMBLE
NEA/ARN:DDEAN
S/SO:MTANNER
NEA/ARP:FDICKMAN

----- 095182

R 010025Z NOV 75
FM SECSTATE WASHDC
INFO RUFHRS/AMEMBASSY ALGIERS 0000
USINT BAGHDAD
AMEMBASSY GEORGETOWN
AMEMBASSY SANA

C O N F I D E N T I A L STATE 254860

STADIS////////////////////////////////////
EXDIS

FOLLOWING REPEAT STATE 254860 ACTION TRIPOLI 31 OCT

QUOTE

C O N F I D E N T I A L STATE 254860

STADIS
EXDIS

FOLLOWING REPEAT STATE 254860 ACTION USUN CAIRO TEHRAN JIDDA
ISLAMABAD INFO MEXICO LA PAZ CARACAS SAN JOSE BUENOS AIRES
OECD PARIS GENEVA BRASILIA PARIS LONDON BONN ROME NEW DELHI
LAGOS QUITO 25 OCT REPEATED BUCHAREST BELGRADE LIMA
TANANARIVE MOGADISCIO OUAGADOUGOU 29 OCT

QUOTE

CONFIDENTIAL

PAGE 02 STATE 254860

C O N F I D E N T I A L STATE 254860

STADIS
EXDIS

E.O. 11652: GDS

TAGS: UNGA, EGEN

SUBJECT: UN RESOLUTION ON CORRUPT PRACTICES BY TRANS-NATIONAL ENTERPRISES (TNE'S)

REF: 1) STATE 252910, 2) USUN 05180

1. SUMMARY: AGENDA ITEM 12 OF THE 30TH UNGA DEALS WITH ECOSOC REPORT, WHICH INCLUDES REFERENCE TO TNE'S. DRAFT RESOLUTIONS PROPOSED BY IRAN, LPBYA AND, WE BELPECE, EGYPT UNDER THIS ITEM PROPOSE THAT HOME GOVERNMENTS ENACT LEGISLATION TO PREVENT CORRUPTION AND TO DISCLOSE TO THE PUBLIC ILLEGAL PAYOFFS BY TNE'S, POSITIONS U.S. CONGRESS IS ALSO CONSIDERING BUT WHICH HAVE NOT RECEIVED DEPARTMENT BACKING, AS WE ARE CONCERNED AT POTENTIAL FOR GRAVE DISTURBANCE OF FOREIGN RELATIONS BY SUCH STEPS. WE WISH YOU TO APPROACH APPROPRIATE OFFICIALS TO DISCUSS WITH THEM IMPLICATIONS OF HOME COUNTRY PENAL AND DISCLOSURE LEGISLATION AND THEIR POSITIONS ON DRAFT RESOLUTION. YOU SHOULD THEN INFORM DEPARTMENT OF OFFICIALS SHARE OUR CONCERN ABOUT THE EXTRATERRITORIAL REACH OF PENAL AND DISCLOSURE LEGISLATION AND IF THEY WOULD ENDORSE ONE OF TWO COURSES OF ACTION DESCRIBED IN PARAGRAPH 8 BELOW. END SUMMARY.

2. ALTHOUGH USG VIEW IS THAT TNE ISSUES SHOULD BE RESERVED FOR UN COMMISSION ON TNE'S, LDC'S APPEAR FIRM IN DESIRE TO DEAL WITH ISSUE OF CORRUPTION BY TNE'S IN REGULAR UNGA SESSION. AS USG STRONGLY CONDEMNS BRIBERY AND ANY SIMILAR ILLERAL ACTIVITIES BY U.S. NATIONALS ABROAD, WE ARE PREPARED TO SUPPORT AN APPROPRIATE RESOLUTION OF CONDEMNATION IN THE GENERAL ASSEMBLY PROVIDED IT IS NOT USED TO VONDEMN THE FREE ENTERPRISE SYSTEM FOR THE FAULTS OF A FEW. THUS, WE WOULD INSIST THAT ANY RESOLUTION ON THIS SUBJECT CONFIDENTIAL

PAGE 03 STATE 254860

CONDEMN NOT ONLY THE ACTIONS OF TNE'S BUT OF ANY OTHER ENTERPRISES MAKING SUCH ILLICIT PAYMENTS AND THAT IT ALSO CONDEMN UNLAWFUL SOLICITATION OF PAYMENTS AS WELL AS THE MAKING OF THEM. (DETAILED CHANGES WHICH U.S. WOULD SEEK TO MAKE IN DRAFT IRAN/LIBYA RESOLUTION ON THIS SUBJECT WHICH IS BEING CIRCULATED IN UNGA ARE DESCRIBED IN REFTEL WHICH IS BEING SENT TO ADDRESSEES.) HOWEVER, BEFORE PROCEEDING TO BRING SUCH A RESOLUTION TO A VOTE WE BELIEVE IT ESSENTIAL TO DISCUSS CERTAIN BASIC ISSUES WITH INTERESTED GOVERNMENTS TO MAKE SURE THERE IS A COMMON PERCEPTION OF THE PROBLEM AND A FULL UNDERSTANDING OF THE IMPLICATIONS OF THE REMEDIES PROPOSED.

3. WE ARE PARTICULARLY CONCERNED AT THE ROLE FORESEEN FOR HOME GOVERNMENTS IN PARAS. 3 AND ESPECIALLY 5 OF THE DRAFT IRAN/LIBYA RESOLUTION DESCRIBED IN RFTL 2 WHICH IS BEING CIRCULATED TO ALL ADDRESSEES. THESE PARAS. READ AS FOLLOWS:

"3. CALLS UPON BOTH HOME AND HOST GOVERNMENTS TO TAKE ALL NECESSARY MEASURES WHICH THEY DEEM APPROPRIATE, INCLUDING LEGISLATIVE MEASURES TO PREVENT SUCH CORRUPT PRACTICES AND TO TAKE CONSEQUENT MEASURES AGAINST THE VIOLATORS;

"5. CALLS UPON HOME COUNTRIES TO ADOPT STRICT MEASURES AGAINST ACTS OF BRIBERY COMMITTED BY THEIR NATIONALS OR CORPORATIONS ABROAD, INCLUDING THE ADOPTION AS APPROPRIATE OF REGULATIONS FOR DISCLOSURE OF FINANCIAL CONTRIBUTIONS MADE BY SUCH CORPORATIONS OR THEIR INTERMEDIARIES IN HOST COUNTRIES."

4. FYI. THESE PARAGRAPHS ENVISION SUBSTANTIVE LEGISLATION BY HOME AND HOST COUNTRIES AND PARAGRAPH 5 ENVISIONS DISCLOSURE LEGISLATION BY HOME COUNTRIES ALONE REGARDING ILLICIT ACTIVITIES IN HOST COUNTRIES. USG IS PUZZLED THAT THIRD WORLD COUNTRIES WOULD BE SUPPORTING THIS APPROACH IN VIEW OF THE VERY NEGATIVE REACTIONS WE HAVE HAD IN VARIOUS CAPITALS TO RECENT DISCLOSURES OF QUESTIONABLE TRANSACTIONS BETWEEN U.S. FIRMS AND HOST GOVERNMENT OFFICIALS. END FYI.
CONFIDENTIAL

PAGE 04 STATE 254860

5. THERE IS STRONG PRESSURE IN U.S. CONGRESS FOR NEW LEGISLATION WHICH WOULD EITHER MAKE ILLICIT PAYMENTS BY U.S. COMPANIES ABROAD A VIOLATION OF U.S. LAW OR COMPEL DISCLOSURE OF PAYMENTS OR CONTRIBUTIONS ABROAD. THE STATE DEPARTMENT HAS OPPOSED EXTRATERRITORIAL PENAL LEGISLATION AND HAS TAKEN A VERY RESERVED POSITION ON GENERAL DISCLOSURE LEGISLATION BECAUSE ENFORCEMENT OF SUCH LAWS WOULD INEVITABLY INVOLVE USG IN THE INVESTIGATION OF THE CONDUCT OF FOREIGN GOVERNMENT OFFICIALS AROUND THE WORLD, COULD LEAD TO POLITICAL DISRUPTIONS IN HOST COUNTRIES AND COULD CREATE STRAINS IN OUR RELATIONS WITH THEM. FYI. (WHEN UNITED BRANDS PAY-OFF TO PRESIDENT OF HONDURAS WAS REVEALED VIA SEC INVESTIGATION, SOME HONDURAN OPINION WAS THAT IT WAS USG EFFORT TO DISCREDIT PRESIDENT. IN ANY EVENT, PRESSURE CAUSED BY RELEVANT FACTORS WAS A CONTRIBUTING CAUSE OF HIS OVERTHROW SHORTLY THEREAFTER.) END FYI. THE STATE DEPARTMENT HAS INDICATED THAT IT WOULD DEFER TO THE JUDGMENT OF U.S. LAW ENFORCEMENT AGENCIES AS TO THE DISCLOSURE AUTHORITY THEY NEED TO PROTECT SPECIFIC U.S. INTERESTS SUCH AS PROTECTION OF INVESTORS AND THE FISC, BUT WE HAVE OPPOSED GENERAL LEGISLATION ON THE GROUND THAT EACH HOST GOVERNMENT SHOULD BE RESPONSIBLE FOR ESTABLISHING

AND ENFORCING THE STANDARDS TO BE OBSERVED IN ITS COUNTRY AND THAT THE USG SHOULD NOT BECOME THE MORAL POLICEMAN OF THE WORLD. ON THE OTHER HAND, WE RECOGNIZE OUR RESPONSIBILITY (L) TO COOPERATE WITH HOST GOVERNMENTS WHO ADOPT A DISCLOSURE POLICY, WND (2) TO MANAGE U.S. GOVERNMENT PROGRAMS SO THAT THEY DO NOT BECOME VEHICLES FOR SUCH ABUSES. THUS, FOR EXAMPLE, U.S. EMB OFFS ARE NOTARIZING THE AFFIDAVITS REQUIRED BY CERTAIN GOVERNMENTS, AND STATE/ DOD HAVE TAKEN STEPS TO ENSURE DISCLOSURE TO PURCHASING GOVERNMENTS OF PAYMENTS MADE TO AGENTS IN CONNECTION WITH FMS SALES. WE ARE ALSO CONSIDERING THE POLICY THAT SHOULD APPLY TO USG LICENSES OF COMMERCIAL SALES OF MILITARY ITEMS SUBJECT TO MUNITIONS CONTROL. WE ARE PRESENTLY INCLINED TO REQUIRE DISCLOSURE IN THOSE CASES ONLY TO THOSE PURCHASING GOVERNMENTS THAT ESTABLISH DISCLOSURE REQUIREMENTS APPLPCABLE TO ALL SELLERS. WE WILL BE SOLICITING YOUR VIEWS ON THESE ISSUES SEPARATELY.

6. FYI. WE HAVE ASSUMED THAT FOREIGN GOVERNMENTS WOULD CONFIDENTIAL

PAGE 05 STATE 254860

GENERALLY AGREE THAT HOME COUNTRIES SHOULD NOT ESTABLISH OR SEEK TO ENFORCE SUBSTANTIVE STANDARDS OR GENERAL DISCLOSURE REQUIREMENTS APPLICABLE TO THEIR COUNTRIES, AND WOULD RESENT USG INTERVENTION IN THESE MATTERS IN THEIR COUNTRIES. INDEED, HOME COUNTRY ENFORCEMENT OF PENAL SANCTIONS FOR ACTIONS ABROAD IN HOST COUNTRY, COULD EASILY INFRINGE ON THE STRICT TERRITORIAL SOVEREIGNTY WHICH LDCS HAVE USUALLY INSISTED UPON. IN VIEW OF FOREGOING WE ARE WONDERING WHETHER 77 SUPPORT FOR THE IRAN/ LIBYAN RESOLUTION DISCUSSED ABOVE REFLECTS A DIFFERENT ASSESSMENT OF THIS MATTER THAN WE WOULD SUPPOSE, OR RATHER A BASIC FAILURE TO UNDERSTAND THE IMPLICATIONS OF THE PROPOSALS FOR HOME COUNTRY ACTION IN THAT RESOLUTION. IT SHOULD BE BORNE IN MIND THAT THE USG IS PREPARED TO RENDER ALL APPROPRIATE ASSISTANCE TO HOST COUNTRY ENFORCEMENT EFFORTS IN CASES OF BRIBERY. END FYI.

7. WE THEREFORE ASK THAT AS SOON AS FEASIBLE YOQ MEET WITH APPROPRIATE GOVERNMENT OFFICIALS TO MAKE THEM AWARE OF RESOLUTION AND TO ASCERTAPN WHETHER THEY HAVE CONSIDERED THE FOLLOWING:

A. DISCLOSUR BY HOME GOVERNMENTS WOULD INEVITABLY REQUIRE NAMING PAYEE AS WELL AS PAYOR. THUS, A HOME GOVERNMENT WOULD, EACH AND EVERY TIME IT ACCUSES A TNE OF ILLEGAL PAYMENTS, ALSO BE NAMING FOREIGN GOVERNMENT OFFICIAL AS RECIPIENTS OF PAYMENT.

B. ENFORCEMENT BY HOME GOVERNMENTS OF EITHER PENAL OR DISCLOSURE LEGISLATURE WOULD ALSO NECESSARILY ENTAIL THE CARRYING OUT OF INVESTIGATIONS BY HOME GOVERNMENT OFFICIALS

OF THE ACTIVITIES OF HOST GOVERNMENT OFFICIALS IN ORDER TO DETERMINE THE FACTS SURROUNDING PURPORTED PAYMENTS. WOULD HOST GOVERNMENTS BE WILLING TO FULLY COOPERATE IN ALL SUCH INVESTIGATIONS?

C. UNTIL NOW, DEPARTMENT HAS BEEN UNDER IMPRESSION THAT SUCH PENAL OR DISCLOSURE LEGISLATION AND THE RELATED INVESTIGATIONS WOULD OFTEN BE CONSTRUED BY HOST GOVERNMENTS AS AN INTERFERENCE IN THEIR INTERNAL AFFAIRS, THUS RESULTING NOT ONLY IN POSSIBLE COMPLICATIONS TO HOME-HOST CONFIDENTIAL

PAGE 06 STATE 254860

COUNTRY RELATIONS BUT ALSO POSSIBLY HAVING IMPORTANT INTERNAL CONSEQUENCES FOR HOST COUNTRIES. BASED UPON THIS BELIEF, THE DEPARTMENT HAS OPPOSED GENERAL U.S. LEGISLATION ON DISCLOSURE. HOWEVER, IF DEPARTMENT VIEW OF HOST COUNTRY POSITIONS IS INCORRECT, DEPARTMENT'S POSITION ON SUCH LEGISLATION MAY REQUIRE REASSESSMENT.

D. IF, HOWEVER, DEPARTMENT IS CORRECT IN ESTIMATING COMPLICATIONS THAT INVESTIGATIONS AND DISCLOSURES WOULD ENTAIL, THEN HOST GOVERNMENT OFFICIALS SHOULD REASSESS THEIR SUPPORT OF PROPOSALS FOR HOME COUNTRY ACTION CONTAINED IN THEIR UNGA DRAFT RESOLUTIONS ON TNE'S AND SUPPORT TO ENACTMENT OF SUCH LEGISLATION IN THE U.S. AND POSSIBLY OTHER HOME GOVERNMENTS.

8. ACTION REQUESTED: USUN - PLEASE INFORM OTHER WEO'S OF OUR CONCERNS ON THIS ASPECT OF UN RESOLUTION, ASCERTAIN THEIR POSITION AND REPORT TO DEPARTMENT. IN YOUR PRIVATE, REPEAT PRIVATE DISCUSSIONS WITH WEO'S AND G-77 MEMBERS CONCERNING OUR REDRAFT (SEE REFTTEL 1) IRAN/LIBYAN DRAFT RESOLUTION CONTAINED USUN 5180, YOU MAY DRAW UPON POINTS CONTAINED HEREIN, BUT SHOULD LIMIT PUBLIC STATEMENTS TO EMPHASIZING THE PRIMARY RESPONSIBILITY OF HOST GOVERNMENTS TO CLARIFY AND ENFORCE THEIR LAWS ON THE SUBJECT. EMBASSIES - IN TEHRAN AND CAIRO, APPROACH SHOULD BE MADE ON BASIS THAT THESE CAPITALS, WITH LIBYA, ARE KNOWN CO-SPONSORS OF RESOLUTION IN QUESTION OR OF OTHER RESOLUTIONS FLOATED DURING NEGOTIATIONS. IN OTHER CAPITALS, APPROACH SHOULD BE MADE ON BASIS THAT USG WISHES TO ASCERTAIN VIEWS OF CAPITALS ON ISSUE NOW BEFORE UN AND TO APPRAISE CAPITALS OF USG POSITION. HAVING STATED DEPARTMENT VIEWS, DRAWING UPON PARAS. 2, 3, PART OF 5, AND 7, IF GOVERNMENT OFFICIALS SEE SOME VALIDITY IN DEPARTMENT POSITION, YOU SHOULD SUGGEST EITHER OF THE FOLLOWING COURSES OF ACTION.

(A) NOTE THE COMPLEXITY OF CORRUPTION ISSUE AND BELIEF OF USG THAT ISSUE SHOULD BE TREATED WITHIN THE FRAMEWORK OF THE UN COMMISSION ON TNE'S, WHICH WILL MEET IN SPRING OF 1976 ON FULL RANGE OF ISSUES RELATED TO TNE'S, INCLUDING A CODE OF CONDUCT RELATED TO TNE ACTIVITIES.

IT WOULD THEREFORE BE APPROPRIATE TO HAVE UNGA NOTE ITS
CONFIDENTIAL

PAGE 07 STATE 254860

CONCERN OVER ISSUE, PERHAPS CONDEMN ILLEGAL PAYMENTS AND
THEIR SOLICIATION, AND REFER MATTER, INCLUDING THE ISSUE
OF REMEDIES, OVER TO UN VOMMISSION ON TNE'S.

(B) IF FIRST APPROACH IS NOT VIEWED FAVORABLY BY OFFICIALS,
ALTERNATIVE APPROACH WOULD BE TO DROP PARASJM E AND 5 OF
IRAN/LIBYAN DRAFT AS THEY NOW STAND AND IN THEIR STEAD
SUBSTITUTE LANGUAGE TO THE EFFECT THAT HOST COUNTRIES
SHOULD ESTABLISH CLEAG STANDARDS AND APPROPRIATE, SPECIFIC
PENALTIES RELATIVE TO THE MAKING OR SOLICITATION OF
ILLEGAL PAYMENTS AND THAT HOME GOVERNMENTS SHOULD PROVIDE
ALL APPROPRIATE COOPERATION TO HOST GOVERNMENT EFFORTS
TO ENFORVE LAWS RELATED TO SUCH PAYMENTS IN THEIR
TERRITORIES.

(C) IF EITHER APPROACH AGREEABLE O OFFICIALS, NOTE
URGENCY OF CARRYING THROUGH ON APPROACH IN UNGA BEFORE
DRAFT RESOLUTION IS DEFINITELY ACTED UPON.

9. INFO POSTS: YOU MAY DRAW UPON PARAS. 2, 3, PART OF 5,
AND 7 AS APPROPRIATE. WHEN WE HAVE ASCERTAINED NAMES OF
ADDITIONAL CO-SPONSORS, YOU MAY BE ASKED TO MAKE DEMARCHE
TO OFFICIALS.
UNQUOTE KISSINGER

CONFIDENTIAL

<< END OF DOCUMENT >>

Message Attributes

Automatic Decaptioning: Z
Capture Date: 26 AUG 1999
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: CORRUPTION, UNGA RESOLUTIONS, MULTINATIONAL CORPORATIONS, PUBLIC ADMINISTRATION
Control Number: n/a
Copy: SINGLE
Draft Date: 01 NOV 1975
Decaption Date: 28 MAY 2004
Decaption Note: 25 YEAR REVIEW
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Authority: ElyME
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 28 MAY 2004
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1975STATE254860
Document Source: ADS
Document Unique ID: 00
Drafter: IO/CMD:ELBRUCE:JPS:LMS
Enclosure: n/a
Executive Order: 11652 GDS
Errors: n/a
Film Number: D750379-1128
From: STATE
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1975/newtext/t19751190/baaaacyn.tel
Line Count: 302
Locator: TEXT ON-LINE, TEXT ON MICROFILM
Office: ORIGIN SS
Original Classification: CONFIDENTIAL
Original Handling Restrictions: EXDIS STADIS
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 6
Previous Channel Indicators:
Previous Classification: CONFIDENTIAL
Previous Handling Restrictions: EXDIS STADIS
Reference: n/a
Review Action: RELEASED, APPROVED
Review Authority: ElyME
Review Comment: n/a
Review Content Flags:
Review Date: 27 MAY 2003
Review Event:
Review Exemptions: n/a
Review History: RELEASED <27 MAY 2003 by ElyME>; APPROVED <15 OCT 2003 by ElyME>
Review Markings:

Margaret P. Grafeld
Declassified/Released
US Department of State
EO Systematic Review
06 JUL 2006

Review Media Identifier:
Review Referrals: n/a
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
Secure: OPEN
Status: NATIVE
Subject: n/a
TAGS: EGEN, XX, UNGA
To: n/a INFO RUFHRS ALGIERS
BAGHDAD
GEORGETOWN
SANA
Type: TE
Markings: Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 06 JUL 2006

